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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/727,134	11/30/2000	Norbert Wolters	8874-US	2924
30689	7590	11/02/2005	EXAMINER	
DEERE & COMPANY ONE JOHN DEERE PLACE MOLINE, IL 61265			KOVACS, ARPAD F	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/727,134	WOLTERS ET AL.
	Examiner Árpád Fábián Kovács	Art Unit 3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 11 October 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-13, 15 and 17-21 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7, 20 and 21 is/are rejected.
- 7) Claim(s) 8-13, 15 and 17-19 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/11/2005.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7, 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiegert (PCT WO 99/03323), in view of Thompson (2777267) and Pottinger et al (GB 2012154, cited by the applicant).

Wiegert discloses:

In re independent claims 1, 2, 20:

a feeding and picking device for feeding and picking a standing crop's individual plant stalks, the device comprising:
a rotating feeding element rotated about a vertical axis in a circle comprising a body with outwardly extending fingers (fig 4, ref 20);
a picking/gathering device (figs 4, 6, refs 10, 11) which separate useable parts from stalks;

claim 3:

a snapping channel/gathering gap (31) wherein the feeding device covers the snapping channel (as shown on fig 4, the feeding device covers the channel);

Wiegert discloses the claimed invention above including the fact the feeding element can be substituted by any other known devices (Applicant can refer to a translated copy, see Appeal Brief, or to an equivalent US Patent 6412259, column 2, lines 32-33), however Wiegert does not show or list the claimed alternative feeding device which grasps plant stalks as claimed.

Both Pottinger and Thompson disclose known devices for conveying the stalk, for example Thompson shows that the feeding device with finger (fig 1-2, ref 31), wherein the fingers of the upper element (for example ref 37) are directed away from a direction of rotation (as shown on fig 1) and the lower feeding element is beneath the upper feeding element and rotate the same direction as the upper one (fig 2, 3); and similarly Pottinger shows on fig 2 and 4, the same arrangement wherein the upper feeding element (bent tines ref. 10 or feeding element(s) are shown, also see page 3, ln 114-115) are directed away from the direction of the feeding element; and the lower feeding element is beneath the upper feeding element and rotate the same direction as the upper one (fig 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the feeding device of Wiegert with the alternative feeding device taught by either Pottinger and/or Thompson, in order to improve the lifting actions and support on stalks which may have been leaned forwardly by the agricultural harvester.

Allowable Subject Matter

3. Claims 8-13, 15, 17-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

4. Applicant's arguments filed 10/11/2005 have been fully considered but they are not persuasive.

Applicant's argument in re the Appeal Board's opinion is incorrect, because the Appeal Board did not consider ref 20 as the feeding element.

In response to applicant's arguments against the references individually (i.e. reference Wiegert, in paragraph 3 on page 5), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant's argument that rotating feeding element (see page 3 of the Rejection, where it states "rotating feeding element ... fig 4, ref 20) as disclosed in Wiegert (for greater accuracy, Applicant can refer to a translated copy or to an equivalent US Patent 6412259, column 2, lines 32-33) cannot be substituted by another device for conveying the stalk (fingers as taught by Thompson, tines/fingers as taught by Pottinger) is not agreed with.

Both Pottinger and Thompson provide for conveying/feeding elements for stalk, therefore it would be obvious to one skilled in the art at the time invention

was made to pick and choose the type of conveying/feeding means utilized.

In response to Applicant's lack of understanding where Pottinger shows the feeding element(s), as the Examiner stated in the Rejection on page 4, 2nd paragraph, bent tines ref. 10 or feeding element(s) are shown, also see page 3, ln 114-115.

Similarly, as the Examiner stated in the Rejection, on page 4, 2nd paragraph, Thompson shows curved fingers ref. 37 or feeding element(s).

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Árpád Fábián Kovács whose telephone number is 571 272 6990. The examiner can normally be reached on Mo-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571 272 6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Árpád Fábián Kovács
Primary Examiner
Art Unit 3671

ÁFK